

Delegated Report

Planning Ref: 23/00470/FUL

Applicant: Marstons

Ward: Cadeby, Carlton, M Bosworth and Shackerstone

Site: Ye Olde Red Lion Hotel, 1 Park Street, Market Bosworth

Proposal: Erection of fence (retrospective)



Hinckley & Bosworth
Borough Council

1. Recommendations

1.1. Refuse planning permission

- Refuse planning permission for the reasons outlined at the end of this report.

2. Planning application description

- 2.1. The proposal is for retrospective planning permission the erection of a timber fence, as a replacement for a brick wall. The wall/fence is located within the rear beer garden of the Ye Olde Red Lion.

3. Description of the site and surrounding area

- 3.1. The Red Lion is a grade II listed building located within the centre of Market Bosworth and within the Market Bosworth Conservation Area. The National Heritage List for England (ref 1361289) describes it as "Public House. Externally of the late C19 or early C20 but internally a C16 core. Timber framed but encased in rough cast rendered brick. Welsh slate roof, cresting. Two storeyed, 6 bays to Main Street and a later C19 wing to Park Street behind. One bay to left is apparently a separate build, with lower plain tiled roof. It contains a 3-light casement window. Doorway beyond and casement windows of three and four lights with dentilled heads. Two gabled dormers above and an oriel bay also beneath a dormer to the right."

The Planning (Listed Buildings and Conservation Areas) Act 1990 (S. 1[5]) provides that buildings and other structures that pre-date July 1948 and are within the curtilage of a listed building are to be treated as part of the listed building.

To the rear of the Red Lion and within its curtilage (along what according to mapping is the historic rear boundary of the plot) was a short length of red brick wall that divided the patio for the public house and a private service/parking area for properties located upon Main Street. The wall was constructed of imperial dimension red bricks that most likely dated from at least the early-20th century. It was topped by blue clay saddleback copings with some occasional buttressing.

Evidence therefore indicates that the wall was located within the curtilage of the Red Lion and it pre-dated July 1948, and as such it is to be treated as part of the listed building.

Due to the age of the construction materials and its aesthetic value including locally distinctive saddleback copings the wall was of some limited historic and architectural interest. As such it made a minor but positive contribution to the special interest and significance of the listed building. Walls of a similar age and appearance surround the remainder of the curtilage of the Red Lion. Red brick boundary walls are also a common boundary treatment within the Market Bosworth Conservation Area and as such the wall was considered to make a minor but positive contribution to its character and appearance.

4. **Relevant planning history**

None

5. **Publicity**

5.1. The application has been publicised by posting a site notice within the vicinity of the site and letters sent out to neighbours. The application was also advertised in the Hinckley Times.

5.2. No comments were received.

6. **Consultation**

6.1. Market Bosworth Parish Council: Objections received, request that the wall is re-instated in sympathetic materials.

6.2. Market Bosworth Society: Objections received, request that the wall is re-instated.

6.3. HBBC Conservation Officer: Objections received, less than substantial harm to the heritage asset and no public benefits known, therefore recommended for refusal.

7.1. **Site Allocations and Development Management Policies DPD (2016)**

- Policy DM1: Presumption in Favour of Sustainable Development
- Policy DM10: Development and Design
- Policy DM11: Protecting and Enhancing the Historic Environment
- Policy DM12: Heritage Assets
- Policy DM17: Highways and Transportation
- Policy DM18: Vehicle Parking Standards

7.2. **Core Strategy (2009)**

- No relevant policies

7.3. **National Planning Policies and Guidance**

- National Planning Policy Framework (NPPF) (2019)
- Planning Practice Guidance (PPG)

7.4. **Other relevant guidance**

- Good Design Guide (2020)
- National Design Guide (2019)

7.5. **Market Bosworth Neighbourhood Plan (2014)**

- Policy CE1: Character and Environment

7. **Appraisal**

8.1. **Key Issues**

- Assessment against strategic planning policies
- Design and impact upon the character of the area and Listed Building
- Impact upon neighbouring residential amenity
- Impact upon highway safety

Assessment against strategic planning policies

- 8.2. Paragraph 2 of the National Planning Policy Framework (NPPF) identifies that planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. Paragraph 2 of the NPPF also identifies that the NPPF is a material planning consideration in planning decisions. Paragraph 12 of the NPPF states that the presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making. Where planning applications conflict with an up-to-date plan, permission should not usually be granted unless other material considerations indicate otherwise.
- 8.3. The development plan in this instance consists of the Core Strategy (2009) and the Site Allocations and Development Management Policies (SADMP) Development Plan Document (2016).

Design and impact upon the character of the area

- 8.4. Policy DM10 of the SADMP seeks to ensure that new development should complement or enhance the character of the surrounding area with regard to scale, layout, density, mass, design, materials and architectural features.
- 8.5. Section 16 of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a duty on the local planning authority when considering whether to grant listed building consent to have special regard to the desirability of preserving the building or any features of special architectural and historic interest which it possesses. Section 66 of the Act places a duty upon the local planning authority when considering whether to grant planning permission for development which affects a listed building to have special regard to the desirability of preserving the building or any features of special historic or architectural interest which it possesses. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 states that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of a conservation area.
- 8.6. Section 16 of the National Planning Policy Framework (NPPF) provides the national policy on conserving and enhancing the historic environment. Paragraphs 199-202 of the NPPF require great weight to be given to the conservation of designated heritage assets when considering the impact of a proposed development on its significance, for any harm to the significance of a designated heritage asset to have clear and convincing justification, and for that harm to be weighed against the public benefits of a proposal.
- 8.7. The Planning Practice Guide (PPG) and Historic England Advice Note 2 (HEAN2) Making Changes to Heritage Assets sets out how the policies of the NPPF are expected to be applied and includes guidance on the conservation of and making changes to the historic environment.
- 8.8. Policies DM11 and DM12 of the Site Allocations and Development Management Policies (SADMP) DPD seek to protect and enhance the historic environment and heritage assets. All proposals for extensions and alterations of listed buildings will only be permitted where it is demonstrated that the proposals are compatible with the significance of the building. Development proposals should ensure the significance of a conservation area is preserved and enhanced.
- 8.9. Policy CE1a of the Market Bosworth Neighbourhood Plan confirms that all new development within Market Bosworth should be in keeping with its Character Area with regards to scale, layout and materials to retain local distinctiveness and create a sense of place.

- 8.10. The original wall has been taken down and replaced with a close boarded timber fence in the same position and to a slightly increased height, which is subject to this retrospective planning application. In the opinion of HBBC's Conservation Area Officer, the removal of the wall as a curtilage listed feature of some limited historic and architectural interest and as a minor but positive contributor to the character and appearance of the conservation area has resulted in an adverse impact upon the significance of the listed building and the conservation area. The level of harm to these designated heritage assets is considered to be less than substantial and at the lower end of this spectrum of harm.
- 8.11. The replacement fence has an inferior appearance compared to a traditional brick wall and clearly stands out as an incongruous boundary treatment which is at odds with the form and appearance of the retained brick walls around the remainder of the public house curtilage. The adverse visual impact of the replacement fence is largely contained to within the Red Lion site itself but the top section of the fence can be glimpsed from the conservation area street scene on Park Street, especially as the fence is higher than the wall, and from Church Street where the fence can be seen in its entirety in longer distance views across the private service/parking area for properties located upon Main Street, so the adverse visual impact can also be appreciated from the wider area.
- 8.12. In summary the replacement fence is not considered a satisfactory solution to offset the loss of the traditional curtilage listed wall.
- 8.13. As currently proposed the less than substantial harm caused to the grade II listed building The Red Lion and the Market Bosworth Conservation Area must be carefully weighed up against the public benefits of the proposal as required by Policies DM11 and DM12 of the SADMP and paragraphs 199, 200 and 202 of the National Planning Policy Framework.
- 8.14. Paragraph 199 of the NPPF states that great weight should be given to the conservation of designated heritage assets, and the more important the asset, the greater the weight should be. This is irrespective of the level of harm to the significance of the asset.
- 8.15. Paragraph 200 of the NPPF states that any harm to the significance of a designated heritage asset should require clear and convincing justification. The need for justification is re-iterated in Policy DM11 of the SADMP.
- 8.16. Information submitted by the applicant, including a short statement and small number of photographs confirm that the wall had a lean and required some level of repair. The submitted information to justify its loss is however far from extensive and is not substantiated by any form of professional assessment of its condition and safety, such as a structural engineers report. It also considered that the harm arising from the loss of the wall could potentially have been avoided by undertaking works of repair and/or stabilisation or could have potentially been mitigated by rebuilding the wall on the same building line, and to the same dimensions and materials, or similar. The applicant states that new footings would have been required for a replacement wall, which is most likely, and that this would have meant disturbance to historic curtilage. It would not be beyond the means of a practicable and reasonable technical solution to rebuild the wall on such a footing and avoid adverse impacts to surrounding historic features, such as the flanking curtilage walls. Overall, it is considered that there is not clear and convincing justification for the loss of the curtilage listed wall so there is conflict with paragraph 200 of the NPPF and Policy DM11 of the SADMP.
- 8.17. Public benefits may follow from many developments and could be anything that delivers economic, social or environmental progress as described in the NPPF

(paragraph 8). Public benefits may include heritage benefits as specified in the Planning Practice Guidance (Conserving and enhancing the historic environment – paragraph 20), such as:

- Sustaining or enhancing the significance of a heritage asset and the contribution of its setting
- Reducing or removing risks to a heritage asset
- Securing the optimum viable use of a heritage asset in support of its long-term conservation

8.18. In my opinion the proposal can demonstrate no heritage benefits or public benefits arising from the proposal. It is considered that greater weight should be given to the conservation of designated heritage assets and the relevant policies of the Planning (Listed Buildings and Conservation Areas) Act 1990, the National Planning Policy Framework, HBBC's Site Allocations and Development Management Policies DPD and Market Bosworth Neighbourhood Plan Document.

8.19. Overall it is considered that the proposal is in direct conflict with Policies DM11 and DM12 of the SADMP, Policy CE1 of the Market Bosworth Neighbourhood Plan and paragraphs 194, 200 and 202 of the NPPF.

Impact upon neighbouring residential amenity

8.20. Policy DM10 of the adopted SADMP requires that development would not have a significant adverse effect on the privacy and amenity of nearby residents and occupiers of adjacent buildings.

8.21. The former wall, and subsequent replacement fence, bordered the development site and a neighbouring property. It is considered that whilst the replacement fence is of different materials and is slightly taller, it would not cause significant detrimental impacts upon neighbouring amenity in terms of loss of light, loss of privacy or overbearing impacts.

8.22. As such it is considered that the proposal would be in accordance with Policy DM10 of the adopted SADMP.

Impact upon highway safety

8.23. Policies DM17 and DM18 of the adopted SADMP supports development that would not have any significant adverse impacts on highway safety and requires new development to provide an appropriate/justified level of parking provision.

8.24. The application does not pose any changes the car parking facilities at the sight and is considered to have no impact upon highway safety, therefore it is considered that the proposal is in general accordance with Policies DM17 and DM18 of the SADMP.

8. Equality implications

8.1 Section 149 of the Equality Act 2010 created the public sector equality duty. Section 149 states:-

- (1) A public authority must, in the exercise of its functions, have due regard to the need to:
 - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 8.2 Officers have taken this into account and given due regard to this statutory duty, and the matters specified in Section 149 of the Equality Act 2010 in the determination of this application.
- 8.3 There are no known equality implications arising directly from this development.
- 8.4 The decision has been taken having regard to all relevant planning legislation, regulations, guidance, circulars and Council policies, including General Data Protection Regulations (2018) and The Human Rights Act (1998) (HRA 1998) which makes it unlawful for the Council to act incompatibly with Convention rights, specifically Article 6 (right to a fair hearing); Article 8 (right to respect for private and family life); Article 1 of the First Protocol (protection of property) and Article 14 (prohibition of discrimination).
9. **Conclusion**
- 10.1. It is considered that replacement fence causes significant adverse impacts and less than substantial harm to Market Bosworth Conservation Area and the heritage asset, through its incongruous design and materials; contrary to Policies DM11 and DM12 of the SADMP DPD; paragraphs 194, 200 and 202 of the NPPF and Policy CE1 of the Market Bosworth Neighbourhood Plan. The harm is not outweighed by the public benefits of the proposal.
10. **Recommendation**
- 11.1 **Refuse Planning Permission:**

- Refuse Planning Permission:

1. The proposal for a replacement fence causes significant adverse impacts and less than substantial harm to Market Bosworth Conservation Area and The Red Lion heritage asset, through its incongruous design and materials; contrary to Policies DM11 and DM12 of the SADMP DPD; paragraphs 194, 200 and 202 of the NPPF and Policy CE1 of the Market Bosworth Neighbourhood Plan. The harm is not outweighed by the public benefits of the proposal.

Notes to applicant

1. In dealing with the application, through ongoing dialogue and the proper consideration of the proposal in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004, the local planning authority have attempted to work with the applicant in a positive and proactive manner by offering a pre-application advice service and by seeking solutions to problems arising in relation to dealing with the planning application as required by the National Planning Policy Framework (paragraph 38) and in accordance with the Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended). However, in this instance, it has not been possible to overcome the concerns raised and the proposal remains in conflict with the provisions of the Development Plan and therefore the application has been refused.
2. This application has been determined in accordance with the following submitted details:
 - Existing First Floor Plan Drg No. 05/05/9631/EX/FFP Rev 1

- Existing Ground Floor Plan Drg No. 05/05/9631/EX/GFP Rev 1
- Location Plan Drg No. 05/05/9631/LP Rev 1
- Pre-existing Elevations Drg No. 08/05/9631/PRE/EX/EL Rev 1
- Pre-existing Site Layout Plan Drg No. 05/05/9631/PRE/EX/SPL Rev 1
- Proposed elevations Drg No. 08/05/9631/PP/EL Rev 1
- Proposed Site Layout Drg No. 05/05/9631/PP/SPL Rev 1
- Site Plan Drg No. 05/05/9631/SP Rev 1
- Application Form
- Design and Access Statement
- Heritage Statement
- Supplementary Images
- Landscaping, Parking and Telecommunication Details